

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE)	12-MDL-2323-AB
PLAYERS' CONCUSSION INJURY)	
LITIGATION)	
)	
_____)	
)	
Kevin Turner and Shawn Wooden,)	Philadelphia, PA
on behalf of themselves and)	April 13, 2017
others similarly situated,)	10:13 a.m.
)	
Plaintiffs,)	
)	
vs.)	
)	
National Football League and)	
NFL Properties, LLC,)	
successor-in-interest to)	
NFL Properties, Inc.,)	
)	
Defendants.)	
_____)	

TRANSCRIPT OF TELEPHONE CONFERENCE
BEFORE THE HONORABLE ANITA B. BRODY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 (The following was heard in Chambers at 11:41 a.m.)

2 COURTROOM DEPUTY: We're on the record, Judge.

3 THE COURT: I didn't get that, Mr. Weiss, who is --
4 who is --

5 MR. WEISS: Sol Weiss, Your Honor.

6 THE COURT: Oh, Sol Weiss, okay. Okay. All right.
7 Who's going to be speaking --

8 MR. MARKS: And good morning, Your Honor, Steve
9 Marks with Podhurst Orseck.

10 THE COURT: Who? Steve --

11 MR. MARKS: Steve Marks with Podhurst Orseck, also
12 class counsel.

13 THE COURT: Oh. All right, who's going to be
14 speaking for class counsel?

15 MS. BENEDETTO: TerriAnne Benedetto, Your Honor.

16 THE COURT: Okay, Ms. Benedetto. And, Mr. Scheff,
17 will you be speaking for Mr. McCabe?

18 MR. SCHEFF: I will, Your Honor.

19 THE COURT: Is Mr. McCabe on the phone?

20 MR. SCHEFF: No, he's not, Your Honor.

21 THE COURT: Okay. All right, Ms. Benedetto, why
22 don't you tell us what this is about since we now have counsel
23 for defendant.

24 MS. BENEDETTO: Your Honor, yes, we received some
25 information from class members who wanted to remain anonymous

1 about calls that they had received from NFL Case Consulting of
2 which Mr. McCabe is the President, and our concerns were that
3 we -- we wanted to make sure that no class members received
4 inaccurate information concerning who NFL Case Consulting --
5 NFL Case Consulting are, you know, that they were not
6 affiliated with the NFL and that they were not approved by the
7 Court and Your Honor.

8 And, also to make sure that no one promised they
9 were going to send them to medical providers after the
10 effective date because as we know that only BAP providers and
11 MAF physicians can provide qualifying diagnoses after the
12 January 7, 2017 effective date, and also to make sure that no
13 one's being guaranteed that they're going to get a qualifying
14 diagnosis by using NFL Case Consulting.

15 And we have had a letter -- a letter from NFL Case
16 Consulting's counsel and we've also had a couple of conference
17 calls and we're trying to see if we can work it out.

18 THE COURT: Okay. Mr. Scheff?

19 MR. SCHEFF: Your Honor --

20 THE COURT: Yes.

21 MR. SCHEFF: -- yes, thank you. Just by way of
22 background, this is a company and these are people who have
23 spent a lot of time in this field. They did a lot of work in
24 the BP settlement so it's not like they're a fly-by-night
25 organization. When I was retained, the company -- we then did

1 an internal investigation.

2 They record all of their telephone calls. We went
3 through their material. What was in the recorded telephone
4 conversations was not consistent with what was in the
5 submission by class counsel. We promptly told class counsel
6 that.

7 Notwithstanding, we reviewed their materials, we
8 brought in compliance counsel. Some tweaks and changes have
9 been made to some of their materials. We shared that with
10 class counsel last week. We had a conversation yesterday and
11 all of this, Your Honor, was with the goal of not going to war
12 with class counsel or with the Court or anybody regarding --

13 THE COURT: Nobody goes to war with me, Mr. Scheff.
14 I'm not part of the war, okay?

15 MR. SCHEFF: Thank you, Your Honor. But simply to
16 make sure that everyone understood that what we were doing was
17 appropriate in our view and if there were concerns, that we
18 would address them, so we've always been trying to resolve it.

19 We think we have the framework of the resolution as
20 Ms. Benedetto said to the Court a few minutes ago, you know,
21 that was reached yesterday, and so we're working on
22 (inaudible) which would then be shared with class counsel for
23 comments and also I think go up on the -- on the NFL website
24 or the settlement website.

25 So, you know, I -- I think what we needed -- and

1 obviously Ms. Benedetto can correct me if I'm -- if I'm
2 misstating anything, is that you know, we need a little time
3 just to finalize what we're doing. I don't think it's going
4 to take a huge amount of time.

5 If we -- if we got a couple of weeks, I think that
6 would be fine and hopefully then we could put this to bed to
7 the satisfaction of class counsel and the Court.

8 THE COURT: Ms. Benedetto, does that meet with your
9 approval?

10 MS. BENEDETTO: Yes, Your Honor, we haven't yet put
11 pen to paper on -- on the language, but a couple weeks should
12 give us plenty of time to do that.

13 THE COURT: But the only thing I'm concerned about
14 is that these letters don't go out in the interim. What's
15 happening in the interim?

16 MR. SCHEFF: Well, Your Honor, they're -- they're in
17 business and we don't think there's anything that they're
18 doing which is inappropriate. They have not made affirmative
19 calls over the last couple weeks since this was filed. We're
20 certainly happy to share our materials with class counsel, but
21 we don't see any reason why they shouldn't be in business.
22 They are --

23 THE COURT: I'm not taking them out of business, but
24 you have NFL -- NFL Case Consulting, LLC, that's what
25 interested me most, is --

1 MR. SCHEFF: That's not been the basis of the claim
2 that was filed and it's not been the basis of the allegations
3 in the injunction that that is problematic in and of itself.

4 THE COURT: Is that --

5 MS. BAYARD: Your Honor, if I may address that?
6 It's Lynn Bayard on behalf of the NFL.

7 THE COURT: Yes.

8 MS. BAYARD: We did share this -- we shared the same
9 concern that the Court has. As we had discussed with class
10 counsel, we thought it was appropriate for class counsel to
11 make the first effort in protecting the class members from
12 these sorts of communications because we thought the substance
13 of them was potentially harmful and potentially deceitful.

14 But we are also deeply concerned that there are some
15 class members who may believe that these communications are
16 coming from the NFL itself because as these materials are
17 protected, they do use the NFL's trademark in a manner that we
18 think is confusing.

19 We're happy to hear that there is a potential
20 resolution in the works. This is the first time we've heard
21 it, and we're certainly willing to get involved in those
22 discussions to make sure that Your Honor's concern about the
23 NFL mark and our concern about the NFL mark is included in any
24 such resolution, but we do think that in the interim, the mark
25 should not be used in any confusing way.

1 MR. SCHEFF: Your Honor, this is Richard Scheff.
2 This is the first time I'm hearing any concern at all about an
3 NFL trademark, that they affirmatively say that they're not
4 affiliated with the NFL in any respect.

5 I'm happy to have a dialogue with anyone concerning
6 these issues, but none of the papers that were filed with the
7 Court, you know, ten days ago was (inaudible) issue in any
8 respect, so this is new information but I'm happy to talk to
9 anybody about it.

10 THE COURT: Okay. Let's -- let's give you a couple
11 days -- until Monday and see whether you can resolve it. If
12 you don't, Ms. Bayard, I suggest that you file papers.

13 MS. BAYARD: Sure, Your Honor, we'll do that.

14 THE COURT: So I'll expect to hear from you and then
15 I'll -- you can ask me for whatever's appropriate and some
16 immediate relief if that's -- if that's -- if you believe
17 that's what's appropriate. Does Mr. Scheff know your
18 telephone number, Ms. Bayard?

19 MR. SCHEFF: I do not, Your Honor.

20 THE COURT: It's --

21 MS. BAYARD: I'm happy to get --

22 THE COURT: Okay, just tell him what law firm --
23 what law firm are you from? Ms. Bayard, just tell him what
24 law firm you're from and then I'm sure he can find you.

25 MS. BAYARD: From (inaudible 11 49 29).

1 MR. SCHEFF: Okay, that's fine, we'll track you
2 down.

3 MS. BAYARD: Great.

4 THE COURT: Okay, so I suggest that you have an
5 immediate conversation and talk about it because I am
6 concerned about the letter. I mean, I'll express that to you,
7 I am concerned about the letter so why don't you -- why don't
8 you both -- Ms. Benedetto, Ms. Bayard and Mr. Scheff, why
9 don't you do some talking and I'll give you until -- let me
10 find a date -- all right, how about April 28th, okay? I
11 expect to hear from you by April 28th, a written -- a written
12 communication, okay, Ms. Benedetto?

13 MS. BENEDETTO: Yes, Your Honor.

14 THE COURT: All right. Ms. Bayard?

15 MS. BAYARD: Yes, Your Honor, thank you.

16 THE COURT: Okay. And I will -- I will follow up
17 and if you have anything to submit to me, I believe it's -- I
18 think I have jurisdiction because I think it is related to the
19 head concussion case.

20 MS. BENEDETTO: I'm sorry, Your Honor, someone has
21 an open -- someone's outdoors or I don't know, but I have
22 trouble hearing Your Honor.

23 THE COURT: Oh, who is this?

24 MS. BENEDETTO: This is Terri Benedetto, I couldn't
25 -- I couldn't hear what Your Honor was saying because it

1 sounded like someone was outdoors. I think they just muted
2 their phone.

3 THE COURT: Oh, I didn't. Did anyone else mute
4 their phone? Hello?

5 UNIDENTIFIED SPEAKER: Yes, Your Honor.

6 THE COURT: What?

7 UNIDENTIFIED SPEAKER: Hello?

8 THE COURT: Ms. Benedetto --

9 MS. BENEDETTO: We heard the feedback is what, Your
10 Honor.

11 THE COURT: Okay. Well, I left -- I want a report
12 from the three of you on or before the -- April 28th, okay?
13 That's a week from Friday.

14 MR. SCHEFF: Yes, Your Honor.

15 THE COURT: And if in fact, Ms. Bayard, you wish to
16 submit some papers, I think -- I mean, I'd have to examine it
17 of course but I think that I would have jurisdiction to hear
18 it.

19 MS. BENEDETTO: I'm sorry, Your Honor, but Your
20 Honor said a week from Friday? That would be the 21st.

21 THE COURT: A week from Friday is -- oh, I'm sorry.
22 Oh, you're absolutely --

23 MR. SCHEFF: That's correct.

24 THE COURT: 21st, yes, the 21st, that's the right
25 date. I'm sorry.

1 MS. BENEDETTO: Yes.

2 THE COURT: I'm pushing it -- yes, the 21st, I want
3 to hear something by the 21st and, Ms. Bayard, if you wish --
4 obviously you're going to have to make an independent judgment
5 of whether it should be brought in front of me, but I think
6 that it's probably appropriate. Okay?

7 ALL COUNSEL: Thank you, Your Honor.

8 THE COURT: Okay, all right, thank you very much.
9 Get to work. Bye.

10 (Proceedings concluded, 11:52 a.m.)

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14 C E R T I F I C A T I O N

15

16 I, Diane Gallagher, court approved transcriber,
17 certify that the foregoing is a correct transcript from the
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19 above-entitled matter.

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